

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: August 26, 2009  
HEARING TIME: 10:00 a.m.  
HEARING PLACE: New York

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IN RE

LEHMAN BROTHERS HOLDINGS, INC., et  
al.,

DEBTORS

CHAPTER 11  
CASE NO. 08-13555  
JUDGE: James Peck

(Jointly Administered)

IN RE

BNC MORTGAGE LLC,

DEBTORS

CHAPTER 11  
CASE 09-10137  
JUDGE: James Peck


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**NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY  
PURSUANT TO BANKRUPTCY RULE 4001 AND 11 U.S.C. §362 (d)**

**PLEASE TAKE NOTICE** that Wells Fargo Bank, N.A. as Trustee, by and through its attorneys, Shapiro & DiCaro, LLP, will move this Court at the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green Courtroom 601, New York, NY 10004, on August 26, 2009 at 10:00a.m., or as soon thereafter as counsel may be heard, for an Order pursuant to Bankruptcy Rule 4001 and 11 U.S.C. §362(d) terminating the automatic stay as to Movant's interest in real property known as 87-16 95<sup>th</sup> Avenue, Ozone Park, New York 11416, and for such and further relief as is just and proper.

**PLEASE TAKE FURTHER NOTICE** that the relief requested may be granted without hearing if no objection is timely filed and served with the Court by the deadline set forth above.

Dated: August 3, 2009  
Rochester, New York

A handwritten signature in black ink, appearing to read "Anne E. Miller-Hulbert", written over a horizontal line.

Anne E. Miller-Hulbert  
Shapiro & DiCaro, LLP  
Attorneys for Wells Fargo Bank, N.A. as Trustee  
250 Mile Crossing Boulevard  
Suite One  
Rochester, NY 14624  
(585) 247-9000

TO: Parties in Interest on the Annexed List

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**MOTION FOR RELIEF FROM THE AUTOMATIC STAY  
PURSUANT TO BANKRUPTCY RULE 4001 AND 11 U.S.C. §362(d)**

Wells Fargo Bank, N.A., as Trustee, by and through its attorneys, Shapiro & DiCaro, LLP, for an Order vacating the automatic stay pursuant to 11 U.S.C. §362(d) and in support thereof, states as follows:

1. BNC Mortgage LLC filed a petition for relief under Chapter 11 of the U.S. Bankruptcy Code on or about January 9, 2009. An Order Directing Joint Administration of the Chapter 11 case of BNC Mortgage LLC with Lehman Brothers Holdings, Inc. et al. was issued on January 14, 2009.

2. Wells Fargo Bank, N.A., as Trustee is the holder of a first mortgage executed by Jose Olivo on October 25, 2005 and given to Mortgage Electronic Registration Systems, Inc., as nominee for BNC Mortgage, Inc. securing the repayment of the principal sum of \$381,600.00 due under the Bond/Note and granting Mortgage Electronic Registration Systems, Inc., as nominee for BNC Mortgage, Inc. a security interest in the Property commonly known as 87-16

95<sup>th</sup> Avenue, Ozone Park, NY 11416 (the "Property"). Copies of the recorded Mortgage and Bond/Note are annexed hereto as Exhibit "A". The mortgage was assigned to Wells Fargo Bank, N.A. as Trustee by instrument dated February 5, 2008 and recorded May 15, 2008 in CRFN 2008000196718. A copy of the recorded assignment of mortgage is annexed as Exhibit "B".

3. The mortgage is in default under the Note and Mortgage for the installment due on August 1, 2007 and all subsequent monthly installments.

4. Movant commenced an action to foreclose its mortgage by the filing of a Summons and Complaint in the Queens County Clerk's Office on February 25, 2008.

5. A foreclosure title search indicated that there is a subordinate mortgage on the Property held by Mortgage Electronic Registration Systems, Inc. as nominee for BNC Mortgage, Inc. ("MERS") in the original principal amount of \$95,400.00. A copy of the foreclosure title search is annexed hereto as Exhibit "C".

6. The payoff balance on the mortgage held by Movant is approximately \$465,770.19.

7. According to the Appraisal which is annexed hereto as Exhibit "D" the fair market value of the Property is \$359,000.00 - \$409,000.00.

8. Upon information and belief, Movant's claim against the Property exceeds the value of the Property and, therefore, Debtor has no equity in the Property.

9. Upon information and belief, Debtor's subordinate mortgage adds little or no value to the bankruptcy estate and, therefore, the Property is not necessary for the reorganization of the Debtor.

10. It is respectfully submitted that good cause exists to vacate the automatic stay of  
11 U.S.C. §362 to allow Wells Fargo Bank, N.A. as Trustee to maintain a foreclosure action on  
its mortgage.

**WHEREFORE**, Wells Fargo Bank, N.A. as Trustee respectfully requests that an Order  
be granted vacating the automatic stay as to Wells Fargo Bank, N.A., as Trustee so as to permit  
the commencement, resumption or maintenance of mortgage foreclosure proceedings with  
respect to the Property, and for such other and further relief as the Court may deem just and  
proper.

Dated: August 3, 2009

A handwritten signature in black ink, appearing to read "Anne E. Miller-Hulbert", written over a horizontal line.

Anne E. Miller-Hulbert  
Shapiro & DiCaro, LLP  
Attorneys for Wells Fargo Bank, NA as Trustee  
250 Mile Crossing Boulevard  
Suite One  
Rochester, NY 14624  
(585) 247-9000

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**ORDER GRANTING RELIEF FROM  
THE AUTOMATIC STAY**

Upon the Motion of Wells Fargo Bank, N.A., as Trustee dated August 3, 2009 with exhibits attached thereto, with proof of service upon the Trustee, Debtor and Debtor's Attorney and the United States Trustee, and the Motion having come to be heard on August 26, 2009, it is hereby:

**ORDERED** that the automatic stay in effect pursuant to 11 U.S.C. Section 362(a) is hereby vacated for cause pursuant to 11 U.S.C. Section 362(d) as to Wells Fargo Bank, N.A., as Trustee, its agents, assigns or successors in interest so that US Bank, National Association, as Trustee, its agents, assigns or successors in interest may take any and all actions under applicable state law to foreclose its mortgage on the premises known as 87-16 95<sup>th</sup> Avenue, Ozone Park, NY 11416, and it is further

**ORDERED** that the Movant shall immediately provide an accounting to the Trustee of any surplus monies realized as a result of the foreclosure sale.

Dated: \_\_\_\_\_, 2009  
New York, NY

Enter:

\_\_\_\_\_  
Honorable James Peck  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK     )  
                                  )ss:  
COUNTY OF MONROE     )

I, Shannon Thompson, being sworn, says, I am not a party to this action; I am over 18 years of age, I reside in Rochester, New York.

On August 3, 2009 I served the within Notice of Motion and Motion for Relief from Automatic Stay upon the parties in interest set forth below:

TO     BNC Mortgage LLC  
        Debtor- in- Possession  
        1901 Main Street  
        Irvine, CA 92624

Weil, Gotshal & Manges, LLP  
Attn: Diane Harvey, Esq., Harvey R. Miller, Esq.  
Jacqueline Marcus, Esq., Ralph I. Miller, Esq.  
Shai Y. Waisman, Esq.  
Attorney for Debtors  
767 Fifth Avenue  
New York, NY 10153



Benjamin Rosenblum, Esq.  
Jones Day  
Attorneys for Debtors  
222 East 41<sup>st</sup> St.  
New York, NY 10017

Curtis, Mallet-Prevost Colt &  
Mosle  
Attn: Jerrold Lyle Bregman, Esq., Lynn P.  
Harrison III, Esq., and Steven J. Reisman, Esq.  
Attorneys for Debtors  
101 Park Avenue  
New York, NY 10178

Hughes Hubbard & Reed  
Attn: Christopher K. Kiplok, Esq. Jeffrey S. Margolin, Esq. and  
Sarah K. Loomis Cave, Esq.  
Attorneys for James W. Giddens, as  
Trustee for the SIPA Liquidation of  
Lehman Brothers, Inc.  
1 Battery Park Plaza  
New York, NY 10004

Office of the U.S. Trustee  
Attn: Andy Velez-Rivera, Paul  
33 Whitehall Street 21<sup>st</sup> Floor  
New York, NY 10004

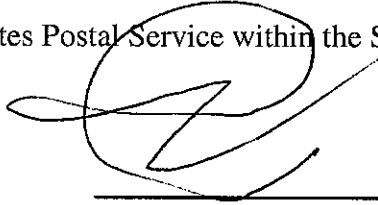
Berstein Shur Sawyer & Nelson  
D. Sam Anderson, Esq.  
Attorneys for Citibank, N.A. In Its Capacity as Trustee  
100 Middle Street  
PO Box 9729  
Portland, ME 04101

Claims and Noticing Agent  
Epiq Bankruptcy Solutions, LLC Claims  
Agent f/k/a Bankruptcy Services, LLC  
757 Third Avenue 3<sup>rd</sup> Floor  
New York, NY 10017


Milbank, Tweed, Hadley & McCloy, LLP  
Attn: Dennis F. Dunne, Esq.  
Attorneys for Official Committee for Unsecured Creditors  
1 Chase Manhattan Plaza  
New York, NY 10005

Quinn Emanuel Urquhart Oliver & Hedges  
Attn: Robert K. Dakis  
Attorney for Official Committee of  
Unsecured Creditors  
51 Madison Avenue 22<sup>nd</sup> Floor  
New York, NY 10010

the addresses designated by the foregoing individuals for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

  
\_\_\_\_\_  
Shannon Thompson  
Legal Assistant

Sworn to before me this  
3rd day of August 2009,

  
\_\_\_\_\_  
Notary Public  
Anne E. Hulbert  
Qualified in Monroe County  
Commissions Expires May 31, 2010